

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs March 25, 2009

**JASON WAYNE ROGERS v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Cumberland County**  
**No. 8725    Leon C. Burns, Jr., Judge**

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**No. E2008-01324-CCA-R3-PC - Filed May 14, 2009**

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The petitioner, Jason Wayne Rogers, appeals from the Cumberland County Criminal Court's denial of his petition for post-conviction relief in which he challenged his 2006 conviction of attempted aggravated child neglect of a child less than six years old. Upon review of the record, we conclude that the post-conviction court properly dismissed his petition as untimely, and we affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and D. KELLY THOMAS, JR., J., joined.

Jason Wayne Rogers, Pro Se, Clifton, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Randall A. York, District Attorney General; and Gary McKenzie, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On October 26, 2006, the Cumberland County Criminal Court entered a judgment of conviction against the petitioner for attempted aggravated child neglect involving a child less than six years old, a Class B felony. *See* T.C.A. §§ 39-15-402(b), 39-12-107 (2003). The judgment reflects that the petitioner was originally charged with aggravated child abuse involving a child less than six years old, a Class A felony; however, pursuant to a plea agreement, the petitioner pleaded to the Class B felony and received a 15-year sentence as a Range I, standard offender. The court entered a corrected judgment on December 14, 2006, to adjust an error reflecting the petitioner's pretrial jail credit.

On January 11, 2007, the petitioner filed in the Wayne County Circuit Court a petition for habeas corpus relief "alleging that he was denied the right to effective assistance of counsel, his guilty plea was unknowing and involuntary, and his sentence was illegal because it

exceeded the maximum [12]-year range statutorily authorized for a Range I offender convicted of a Class B felony.” *Jason Wayne Rogers v. Cherry Lindamood, Warden*, No. M2007-00708-CCA-R3-HC, slip op. at 1 (Tenn. Crim. App., Nashville, Dec. 12, 2007). The court dismissed his petition on March 1, 2007, and the petitioner appealed to this court. *Id.* This court concluded that the petitioner’s claims of ineffective assistance of counsel and involuntary and unknowing guilty plea were not cognizable claims in habeas corpus relief. *Id.*, slip op. at 2. We further concluded that “the petitioner’s [15]-year sentence is not a void sentence even though it exceeded the maximum sentencing range for his Range I classification because the sentence fell within the maximum punishment range of [30] years authorized for Class B offenses.” *Id.* (citing *Hoover v. State*, 215 S.W.3d 776, 779-80 (Tenn. 2007); T.C.A. § 40-35-112(c)(2)). This court affirmed the Wayne County Circuit Court in a judgment filed December 12, 2007. *Id.*

On March 20, 2008, the petitioner filed a petition for post-conviction relief listing the same issues presented in his January 11, 2007 habeas corpus petition. The post-conviction court heard the matter on April 14, 2008, and on May 22, 2008, the court entered a written order denying relief. The post-conviction court determined that the petitioner “filed his petition for relief beyond the 120 days grace period for filing, as well as, beyond the year allowed for filing a Post Conviction Petition.” The petitioner filed a notice of appeal on June 12, 2008, and in a supporting memorandum, argued that a year had not elapsed since this court’s ruling on his appeal of his habeas corpus petition.

On appeal, the petitioner again asserts that his counsel was ineffective and his plea was not voluntary based on his “illegal sentence.” The State argues that, because the petitioner filed no direct appeal of his conviction, his judgment of conviction became final on November 25, 2006, 30 days after its entry, and that his untimely-filed March 20, 2008 petition exceeded the one-year statute of limitations. *See* T.C.A. § 40-30-102(a). The petitioner, in his reply brief, argues that the post-conviction court erred in dismissing his petition as untimely because “the statute of limitation for filing was tolled, by the unconstitutional failure of the Wayne County Circuit Court to treat the January 11, 2007 petition for habeas corpus relief, as one for post conviction relief.” The petitioner alleges that, because two of his issues set forth in his habeas corpus petition--his claims of ineffective counsel and involuntary guilty plea--were realistically issues for post-conviction relief, the habeas corpus court’s failure to treat such issues as claims for post-conviction relief necessitated a tolling of the one-year statute of limitations until the final disposition of his habeas corpus petition.

The statute of limitations for filing a post-conviction petition is jurisdictional. *See* T.C.A. § 40-30-102(b) (“No court shall have jurisdiction to consider a petition filed after the expiration of the limitations period unless [certain statutory prerequisites are met].”). Our supreme court has held that “the one-year statutory period is an element of the right to file a post-conviction petition and that it is not an affirmative defense that must be asserted by the State.” *State v. Nix*, 40 S.W.3d 459, 464 (Tenn. 2001). Thus, “it is incumbent upon a petitioner to include allegations of fact in the petition establishing either timely filing or tolling of the statutory period,” and the “[f]ailure to include sufficient factual allegations of either compliance with the statute or [circumstances] requiring tolling will result in dismissal.” *Id.* However we note, “strict application of the statute of limitations may not deny a petitioner ‘a reasonable opportunity to assert a claim in a meaningful time

and manner.”” *Williams v. State*, 44 S.W.3d 464, 468 (Tenn. 2001) (quoting *Seals v. State*, 23 S.W.3d 272, 279 (Tenn. 2000)).

The petitioner correctly asserts that “[a] petition for habeas corpus may be treated as a petition [for post-conviction relief] when the relief and procedure . . . appear adequate and appropriate.” T.C.A. § 40-30-105(c). However, the trial court is not required to do so. *See Ray v. State*, 489 S.W.2d 849, 850 (Tenn. Crim. App. 1972). Further, in the present case, the petitioner’s habeas corpus petition was filed in Wayne County, where he was imprisoned, and not Cumberland County, where he was originally convicted. A post-conviction petition must be filed “with the clerk of the court in which the conviction occurred.” T.C.A. § 40-30-104(a). The Wayne County Circuit Court had no jurisdiction to hear the petitioner’s post-conviction claims because it did not enter the judgment of conviction, and it had no authority to transfer the case to Cumberland County. *See Carter v. Bell*, --- S.W.3d ---, No. M2006-01363-SC-R11-HC, slip op. at 6 (Tenn. Feb. 27, 2009) (finding no statutory authority for a county court to transfer a habeas corpus action to the county court of original conviction for post-conviction proceedings). We further note that, during the entire litigation of his habeas corpus claim, petitioner never argued his non-cognizable claims should be treated as post-conviction claims.

In light of the foregoing analysis, we cannot say that the petitioner was denied a reasonable opportunity to put forth a meaningful post-conviction claim. Additionally, we note that the petitioner’s post-conviction claims are rooted in his misguided belief that his sentence is “illegal.” This court has already determined that his 15-year sentence falls within the ambit of our sentencing law, and we will not revisit the issue. *See Jason Wayne Rogers*, slip op. at 2. The post-conviction court lacked jurisdiction to consider his untimely petition, and we affirm the post-conviction court’s denial of post-conviction relief.

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JAMES CURWOOD WITT, JR., JUDGE